

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

BFI WASTE SERVICES OF PENNSYLVANIA, LLC
d/b/a ALLIED WASTE SERVICES OF BRANDYWINE
AND REPUBLIC SERVICES OF BRANDYWINE

Employer

and

Case 04-RC-146128

TEAMSTERS LOCAL 312, a/w INTERNATIONAL
BROTHERHOOD OF TEAMSTERS¹

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

When a union seeks to represent a readily identifiable group of employees who share a community of interest, the Board normally will find that the group constitutes an appropriate unit. A party seeking to include additional employees must show that they share an overwhelming community of interest with the employees in the petitioned-for unit. In this case, Petitioner Teamsters Local 312 seeks to represent a unit of all full-time and regular part-time Drivers and Helpers working out of the Employer's West Grove, Pennsylvania facility.² The Employer contends that the unit also must include Maintenance Technicians and Container Shop Welders. The Drivers and Helpers perform discrete functions, are separately supervised, spend most of their time away from the Employer facility at which the Technicians and Welders work and rarely interchange with the Technicians and Welders. As explained in greater detail below, I find that the Drivers and Helpers are an identifiable group of employees sharing a community of interest. I further find that the Employer has not shown that the Technicians and Welders share an overwhelming community of interest with the petitioned-for employees. Accordingly, I shall order an election in the unit sought by Petitioner.

In this Decision, I will first provide an overview of the Employer's operations. Then, I will set forth the legal standards to be applied in resolving the community-of-interest issues presented in this case. I will end by setting forth the facts and reasoning supporting my conclusions.

¹ The names of the Employer and Petitioner appear as corrected at the hearing.

² The petition describes the unit as encompassing all drivers and "loaders," but the parties agreed that these "loaders" are classified by the Employer as "helpers."

I. OVERVIEW OF OPERATIONS

The Employer is a waste hauler picking up waste from industrial, commercial and residential customers and transporting it to landfills, recycling centers or other disposal facilities. This case involves the Employer's operations in West Grove, Pennsylvania, commonly referred as the Brandywine facility. There is no history of collective bargaining at the facility.

The Brandywine facility consists of a single building with offices in the front and truck and container repair shops in the rear. Vehicles dispatched from the facility collect and dispose of waste. A parking lot at the rear of the building is used to store the Employer's vehicles not in use. Drivers, Helpers, Technicians and Welders who operate and repair the Employer's vehicles. Office personnel park in a separate lot in the front of the building. Technicians and Welders spend most of their time working in the shop located in the rear of the Brandywine facility repairing vehicles and containers. Drivers and Helpers spend most of their time on the road transporting trash.

Operations Manager Kyle Larkin is in charge of the Brandywine facility. Larkin reports to General Manager Alan Hemma who is not located at the Brandywine facility. Hemma has responsibility for five other facilities. Three Operations Supervisors and Maintenance Supervisor Charles Leamy report to Larkin. Drivers and Helpers report to the Operations Supervisors. Technicians and Welders report to Leamy. The Drivers and Helpers are considered part of the Operations Department. The Technicians and Welders are in the Maintenance Department, and Leamy, in addition to reporting to Larkin, also answers to Regional Maintenance Manager Joseph Address. Like Hemma, Address has responsibility for facilities in addition to Brandywine.

There are 43 Drivers, three Helpers, six Maintenance Technicians,³ and two Container Shop Welders at the Brandywine facility. In addition to the Drivers, Helpers, Technicians and Welders, there are approximately 22 individuals who work in Brandywine as supervisors, office clerical employees, dispatchers, operations clerks, shop clerks, maintenance shop clerks, customer service employees, inside sales representatives, division accountants, accounting employees, and account managers. The parties stipulated these individuals are properly excluded from any unit.

II. RELEVANT LEGAL STANDARDS

The Act does not require that a unit for bargaining be the only appropriate unit or even the most appropriate unit. Rather, it requires only that the unit be *an* appropriate one. *International Bedding Co.*, 356 NLRB No. 168 (2011); *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting*, 290 NLRB 150 (1988). Procedurally, the Board examines the petitioned-for unit first. If that unit is appropriate, the inquiry ends. *Wheeling Island Gaming*, 355 NLRB 637, fn. 2 (2010); *Bartlett Collins Co.*, 334 NLRB 484 (2001). It is only where the petitioned-for unit is not appropriate that the Board will consider alternative units, which may or may not be units suggested by the parties. *Id*; *Overnite Transportation Co.*, 331

³ This number includes the lead Maintenance Technician, Kevin Brumbaugh, who the parties stipulated is not a statutory supervisor.

NLRB 662, 663 (2000). In *International Bedding*, 356 NLRB at 2, the Board emphasized that the petitioner's position regarding the scope of the unit is a relevant consideration, citing *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), *enfd.* 411 F.2d 356 (7th Cir. 1969), *cert. denied* 396 U.S. 832 (1969).

In determining whether a proposed unit is appropriate, the focus is on whether employees share a community of interest. *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 491 (1985). To make this determination, the Board examines such factors as employee skills and job functions; common supervision; contact and interchange; similarities in wages, hours and other terms and conditions of employment; functional integration; and bargaining history, if any. *Publix Super Markets*, 343 NLRB 1023 (2004); *United Operations, Inc.*, 338 NLRB 123 (2002); *Bartlett Collins*, *supra*; *Home Depot USA*, 331 NLRB 1289 (2000). The Board has found units of drivers to be appropriate where they perform distinct functions, possess different skills and have insubstantial interchange with other employees. *Laidlaw Waste Systems v. NLRB*, 934 F.2d 898, 137 LRRM 2631 (7th Cir. 1991), *enfg.* 299 NLRB No. 124 (1990); *Gogin Trucking*, 229 NLRB 529, 538 (1977); *Giordano Lumber*, 133 NLRB 205, 206–207 (1961). Integration and contact between other employees and drivers does not necessarily require their inclusion in the same unit. *Overnite Transportation*, 325 NLRB 612 (1998).

In *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 10-13 (2011), the Board clarified the framework to be applied in making unit determinations where a party seeks a unit that is broader than the petitioned-for unit. Pursuant to this decision, the Board first looks at whether the petitioner seeks a unit consisting of employees “who are readily identifiable as a group,” based on job classifications, departments, functions, work locations, skills, or similar factors, and whether these employees share a community of interest. In *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 8 (2014) and *Bergdorf Goodman*, 361 NLRB No. 11, slip op. at 2 (2014), the Board made it clear that whether the employees are “readily identifiable as a group” and whether they share a community of interest are two separate inquiries. If both standards are met, the party seeking a broader unit must demonstrate “that employees in the larger unit share an *overwhelming* community of interest with those in the petitioned-for unit.” [Emphasis added]. Additional employees share an overwhelming community of interest with petitioned-for employees only when there is no legitimate basis upon which to exclude them from the petitioned-for unit because the traditional community-of-interest factors overlap almost completely. See *Fraser Engineering Co.*, 359 NLRB No. 80, slip op. at 1 (2013); *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163, slip op. at 3 (2011), *enf. denied* on other grounds sub nom. *NLRB v. Enterprise Leasing Co. Southeast*, 722 F. 3d 609 (4th Cir. 2013). On the other hand, the Board will not approve a petitioned-for fractured unit that seeks “an arbitrary segment” of what would be an appropriate unit. *Bergdorf Goodman*, *supra*, slip op. at 4 (2014); *Odwalla, Inc.*, 357 NLRB No. 132, slip op. at 5 (2011); *Specialty Healthcare*, 357 NLRB slip op. at 13; *Pratt & Whitney*, 327 NLRB 1213, 1217 (1999).

III. FACTS

A. Job Functions, Employment Turns, Compensation

Drivers

Drivers are responsible for picking up waste and transporting it to disposal facilities. Employees in four driver groups – Industrial, Commercial, Residential, and Container Delivery – are required to have commercial driver’s licenses. Drivers typically are paid on an incentive basis by a day rate or by the haul. Drivers are paid hourly for “help time,” which entails helping other drivers perform their routes or by finishing another driver’s route. All Drivers have the opportunity to earn extra “help time.”

Commercial Drivers pick up waste from small containers or dumpsters at commercial establishments, such as retail, office or healthcare customers, and empty the waste into their collection trucks. Commercial Drivers are paid by the container yard. They generally work 52 hours per week and earn the most of all the Drivers although the record does not indicate the precise amount of their compensation.

Industrial Drivers pick up and deliver compactors and open-top containers to industrial customers, including job sites, office buildings, and hotels. Industrial Drivers use roll-off trucks, which are about 28 feet long, to pick up waste in large containers or compactors and then deliver the waste to landfills, recycling centers or other disposal facilities. The Industrial Drivers then return the empty containers or compactors back to the industrial customer. Industrial Drivers are paid either by day rate or by the haul. They average a 50-hour workweek and typically earn less than Commercial Drivers, but more than Residential Drivers.

Residential Drivers service three different types of residential customers: municipal contract customers, homeowners’ associations and single subscriptions. These Drivers can pick up a cart of waste by using an automated truck arm, using a front-end residential truck where the waste is emptied up over top of the truck, or by having helpers empty the waste carts into their trucks. Residential Drivers are paid by a day rate. They average a 45-hour workweek and earn less than both Commercial and Industrial Drivers.

Container Delivery Drivers deliver commercial containers to new customers, pick up containers from customers who cancelled their service and exchange containers that need repairs. The record does not disclose how many hours per week they work, but they generally earn the same as Residential Drivers.

Drivers generally are assigned the same truck and same route on a consistent basis, although certain Drivers, called swing Drivers, fill in for other Drivers in case of absences and vacations. Routes typically are assigned based on seniority. Drivers generally begin work anywhere between 3:30 a.m. and 6:30 a.m. and spend 15 to 30 minutes at the Brandywine facility at the start of their shifts completing their pre-trip inspections. They also spend about 15 minutes at the facility at the end of the workday preparing post-trip paperwork and doing post-trip vehicle inspections. The remainder of the Drivers’ work day is spent on the road.

Drivers are required by law to complete vehicle condition reports (VCR) at the beginning and end of each shift. The reports are used by Maintenance Technicians in evaluating the condition of the Employer's vehicles and determining whether repairs are required. On occasion, Drivers make minor repairs to their vehicles while on the road. Examples include repairing emissions filters in the regeneration of a new truck, bleeding the moisture out of air tanks or doing minor brake adjustments. These repairs normally are performed only after consultation with a Maintenance Technician located back at the Brandywine facility, and a Technician will be dispatched if a repair is too involved for a Driver to handle alone. Occasionally, Drivers are asked to paste stickers or labels on Employer owned containers at customer facilities, a task usually handled by the Container Shop Welders.

Helpers

Helpers are assigned to assist Residential and Commercial Drivers by unloading waste into trucks. Their working hours and start times are the same as the working hours and start times of the Drivers they work with. Like many of the Drivers, Helpers are paid a day rate. They make less than the Drivers and Maintenance Technicians.

Container Shop Welders

Container Shop Welders are responsible for container and compactor maintenance, installation and removal. Their job duties include repairing, welding, and painting containers and compactors and applying stickers and labels to the containers. Although the Welders spend most of their time in the container shop at the Brandywine facility, they will sometimes drive to customer locations to install or repair containers. Traveling to customer facilities takes up approximately 20% of the Welders' time. Drivers sometimes inform Welders that containers need repairs and assist with installation. Container Shop Welders are paid hourly and typically earn the lowest amount of all the positions at issue, about 5-10% less than the Helpers. Container Shop Welders generally begin work between 6 a.m. and 7 a.m. and average about 40-45 hours per week.

Maintenance Technicians

Maintenance Technicians⁴ maintain the Employers vehicles by making repairs and performing preventive maintenance. Although the Technicians are not required to possess a commercial driver's license (CDL), four out of six Technicians have such licenses and are paid more for securing them. Maintenance Technicians are encouraged, but not required, to obtain National Institute for Automotive Service Excellence certifications.

Two Maintenance Technicians report to work between 4 a.m. and 4:30 a.m. whereas other Technicians report to work at 1:30 p.m. Technicians average a 50-hour workweek. The morning shift Technicians make certain the Employer's vehicles are roadworthy before Drivers leave on their routes. The afternoon Technicians are present when Drivers return at the end of the work day and are available to handle any problems the Drivers have uncovered during either the course of the day or during post-trip inspections of their vehicles.

⁴ The record refers to Maintenance Technicians or mechanics. For consistency purposes, this Decision refers to this position as Maintenance Technician.

Technicians sometimes talk Drivers through minor repairs which become necessary during the course of a work day and which Drivers can perform themselves. If a Driver is unable to handle a repair, the Technician will go into field to do it. The record does not indicate how much time Technicians spend performing repairs outside the Brandywine facility.

Maintenance Technicians often have to drive trucks in and out of the shop to complete needed repairs. Those who possess a CDL also drive the trucks to the Mack truck dealership for warranty repairs. Maintenance Technicians drive pickup trucks to make repairs on trucks that break down away from the Brandywine facility.

The Employer classifies its technicians into A, B, and C Maintenance Technicians. The A Maintenance Technicians are the most qualified and possess the greatest skill set. The B Maintenance Technicians are less skilled, but have greater qualifications than C Maintenance Technicians, who are also known as preventative maintenance mechanics. C Maintenance Technicians typically earn roughly the same amount as Residential Drivers. A and B Maintenance Technicians typically earn roughly the same amount as Industrial and Commercial Drivers. Maintenance Technicians are paid hourly.

Other terms and conditions of employment

All employees, including the employees the parties stipulated are excluded from any appropriate unit, have the same employee handbook and benefits. Similarly, all employees share the same time clock. The Employer supplies uniforms for the Drivers, Helpers, Technicians and Welders and also provides employees in these classifications with a shoe/boot allowance. The Drivers, Helpers, Technicians and Welders wear the same uniforms, although Technicians and Welders normally wear coveralls over their uniforms.

The Employer considers Drivers, Helpers, Maintenance Technicians, and Container Shop Welders as safety sensitive positions because they all perform duties for the company that can be potentially harmful to the employee, the public or customers. All safety sensitive positions are subject to quarterly random drug and alcohol testing and participate in monthly safety and OSHA training. They also participate in defensive driving training, safety banquets and touch-a-truck family events. Safety sensitive employees are eligible to receive Dedicated to Safety and Dedicated to Excellence recognitions that reward these employees respectively for having no preventable accident or injury for a year and for having no unexcused absences or discipline for a year as well. For all safety sensitive employees, the Employer completes a pre-hire and an annual check of their motor vehicle reports. However, the Drivers are the only safety sensitive employees required to possess commercial driver's licenses.

B. Supervision

The Drivers and Helpers in the operations department report to different immediate supervisors than do the Maintenance Technicians and Container Shop Welders in the maintenance department. Three Operations Supervisors are responsible for handling minor discipline and distributing daily work assignments to Drivers and Helpers. Maintenance Supervisor Charles Leamy is responsible for overseeing the day-to-day work of the Technicians and Welders and imposing minor discipline such as verbal counselings and write-ups.

Operations Manager Kyle Larkin is involved in more serious discipline including suspensions and General Manager Alan Hemma is involved in all terminations of employment at the facility.

C. Contact and Interchange

Drivers and Helpers spend most of their work days away from the Brandywine facility, unlike Maintenance Technicians and Container Shop Welders. Despite this, the record establishes some degree of contact with the two groups. Drivers interact with Maintenance Technicians when a truck needs repairs, and Technicians receive their work assignments based on the vehicle condition reports the Drivers complete. Drivers sometimes inform Container Shop Welders when containers and compactors are in need of repair and coordinate with the Welders to transport the container or compactor back into the shop so that repairs or installations can be completed. Drivers, Helpers, Maintenance Technicians and Container Shop Welders share a common break area located in the Brandywine facility, although it is not clear how often the Drivers and Helpers use the break area since most of their workday is spent away from the facility.

Helpers can advance to become Drivers. The record contains just one instance of a Helper becoming a Driver in the past year at the Brandywine facility, but the practice is more common at other Employer operated facilities.

As for permanent interchange between Drivers/Helpers and Technicians/Welders, the Employer could point to just two examples. Current Maintenance Supervisor Charles Leamy began his employment with the Employer as a Maintenance Technician, but switched to a Driver position before being promoted to his present position as Maintenance Supervisor in the summer of 2013. While working as a Driver, Leamy was sometimes asked to handle maintenance work. Kevin Dolph, who currently works for the Employer as a Maintenance Technician, began his employment as a Driver. Dolph has not been a Technician for at least two years and has not been asked to temporarily perform driving work during that period. Except for Leamy, the record does not indicate any temporary interchange between the Driver/Helper and Technician/Welder positions in the last two years.

D. Functional Integration

The Drivers/Helpers and Technicians/Welders are functionally integrated since the Technicians/Welders perform repairs on the equipment used by the Drivers/Helpers. The Employer has a company-wide equipment maintenance program called One Fleet, which has maintenance and operations departments working together to improve equipment readiness, availability and reliability. As part of this program, operations and maintenance managers meet on a daily basis to discuss issues related to equipment.

IV. ANALYSIS

If the petitioned-for unit consists of a readily identifiable group of employees who share a community of interest, it will be found appropriate unless there are additional employees with whom those employees share an overwhelming community of interest. *Specialty Healthcare*, 357 NLRB slip op. at 10-13. Therefore, the first two threshold questions in this case are whether

the Petitioner's proposed bargaining unit of Drivers and Helpers constitutes a readily identifiable group and whether the employees in this group share a community of interest.

I find that these questions should be answered affirmatively. The Drivers perform a distinct function, operating the Employer's vehicles, and are the only employees at the Brandywine facility required to possess a commercial drivers' license. Although the Helpers are not obliged to have a commercial license, they spend virtually all of their time working with the Drivers. Further, the Drivers and Helpers appear to be the only employees in the Brandywine facility who are considered part of the operations department, and, unlike other Brandywine facility employees, they spend the vast majority of their time working outside the facility. The Drivers and Helpers clearly constitute an identifiable group.

They also share a community of interest. Drivers and Helpers are subject to common day-to-day supervision by the Operations Supervisors. They are paid day or piece rates in contrast to the Mechanics and Welders who are hourly paid. And, they work the same hours, starting between 3:30 a.m. and 6 a.m. and working until they have finished their routes. No other employees work this precise schedule.

In short, the Drivers and Helpers form a distinct group of workers performing functions distinguishable from the Employer's other employees and sharing supervision and common working conditions. They appear to be an appropriate unit, and the burden is on the Employer, if it wishes to have the Maintenance Technicians and Container Shop Welders included in this unit, to show that the Technicians and Welders share an overwhelming community of interest with the Drivers and Helpers. And, as the Board has explained, "additional employees share an overwhelming community of interest with the petitioned-for employees only when there is no legitimate basis on which to exclude [the] employees" from the petitioned-for unit because the traditional community-of-interest factors "overlap almost completely." *Northrop Grumman Shipbuilding*, supra, 357 NLRB slip op. at 3, quoting *Specialty Healthcare*, supra, 357 NLRB slip op. at 11, and *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421, 422 (D.C. Cir. 2008).

I find that the Employer has failed to meet its burden since it is clear at least some community of interest factors would support finding a separate unit of Drivers and Helpers appropriate. Drivers and Helpers, for instance, perform job functions distinct from those performed by the Maintenance Technicians and Container Shop Welders. The Maintenance Technicians and Container Shop Welders repair vehicles and containers. The Drivers and Helpers operate them.

The two groups also work in different areas. The Technicians and Welders spend the bulk of their time in the shops at the Employer's Brandywine facility. The Drivers and Helpers work mostly away from the facility.

The Drivers/Helpers and Technicians/Welders are included in different departments within the Employer's organizational structure and are subject to separate day-to-day supervision. Technicians and Welders are in the maintenance department. Drivers and Helpers are part of the operations department. Technicians and Welders are supervised on a day-to-day basis by Maintenance Supervisor Charles Leamy. Drivers and Helpers report on a daily basis to Operations Supervisors.

There is also a difference in pay. Drivers and Helpers are paid mostly on a daily or piece rate basis. Technicians and Welders are hourly paid.

Finally, there is relatively little interchange between the Drivers/Helpers and Technicians/Welders. The Employer was able to point to just two employees who have permanently transferred between driver and maintenance positions, and only one individual, current Maintenance Supervisor Leamy, appears to have been asked to move between the two groups on a temporary basis. This is not a situation in which significant numbers of employees in the two groups spend substantial periods of time working alongside each other. *Home Depot USA*, supra. 331 NLRB at 1291. In short, most community of interest factors indicate that Drivers/Helpers and Technicians/Welders could be viewed as separate appropriate units.

The Employer counters by noting that the Technicians and Welders receive the same benefits as Drivers and Helpers and are subject to the same Employee Handbook. It also points out that the two groups are functionally integrated since the Technicians and Welders repair the equipment used by the Drivers and Helpers and that there is regular contact between the two groups in connection with the repairs. Further, Drivers and Helpers sometimes perform functions normally handled by Technicians and Welders, making minor repairs to vehicles or pasting stickers on containers.

However, the fact that two groups of employees perform minor duties in common is not sufficient to require their inclusion in the same unit. And, the fact that Drivers apply stickers and labels on containers and perform minor repairs is insufficient to negate their separate identity as a distinct unit. See *Home Depot USA, Inc.*, supra.; *Overnite Transportation Co.*, supra. 322 NLRB at 347. Similarly, the level of functional integration and contact here is not so great as to require placement of the Technicians and Welders in a Driver unit, and the existence of some shared benefits does not demonstrate the overwhelming community of interest necessary to compel inclusion. *Overnite Transportation Co.*, 325 NLRB at 612. Further, the Board has often rejected arguments similar to those being made by the Employer in finding that drivers and mechanics did not have to be included in the same unit. See, e.g., *Home Depot USA*, supra.; *Navato Disposal Services, Inc.*, 330 NLRB 632 (2000); *Overnite Transportation Co.*, 325 NLRB 612 (1998) and 322 NLRB 347 (1996); *Mc-Mor-Han Trucking Co., Inc.*, 166 NLRB 700, 701 (1967); *Giordano Lumber Co.* 133 NLRB 205.⁵

In sum, I conclude that the Employer's Maintenance Technicians and Container Shop Welders do not share an overwhelming community of interest with its Drivers and Helpers. As a consequence, I find the unit of Drivers and Helpers sought by Petitioner is appropriate, and I shall order an election in that unit.

⁵ The cases principally relied upon by the Employer in its Brief, *International Bedding Co.*, 356 NLRB No. 168 (2011) and *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964), are distinguishable. In both cases, the petitioning union sought to have mechanics included in driver units, and the question was whether they had to be excluded. The Board found the mechanics could be appropriately included, but this is, of course, different from finding, as the Employer argues here, that their inclusion is required. The fact that an appropriate unit could include mechanics and drivers together does not mean that the only appropriate unit must encompass both groups.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization which claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Drivers and Helpers employed at the Employer's West Grove, Pennsylvania facility; **excluding** all other employees, Maintenance Technicians, Container Shop Welders, office clerical employees, dispatchers, operations clerks, shop clerks, maintenance shop clerks, customer service employees, inside sales representatives, division accountants, accounting employees, account managers, managers, guards and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **International Brotherhood of Teamsters Local 312 a/w International Brotherhood of Teamsters**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they

appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the NLRB Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **Tuesday, March 24, 2015**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by mail, facsimile transmission at (215) 597-7658, or by electronic filing through the Agency's website at www.nlrb.gov. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party. Since the list will be made available to all parties to the election, please furnish a total of three (3) copies, unless the list is submitted by facsimile or electronic filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to 12:01 a.m. on the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the

election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, a request for review of this Decision may be filed with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001.

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by the close of business on **Tuesday, March 31, 2015, at 5:00 p.m. (ET)**, unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁶ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at **www.nlrb.gov**. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated: March 17, 2015

/s/ Daniel E. Halevy _____
DANIEL E. HALEVY
Acting Regional Director, Region Four
National Labor Relations Board

⁶ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.